

WRIT PETITION NO.89/1998

Dr. Rajesh Ghanashyam Keni,
29 years of age,
Technical Officer,
Kwality Animal Feeds,
R/o. Sai Prasth, Sudha Colony,
Bordem, Bicholim, Goa. Petitioner.

V/s.

1. State of Goa,
through the Chief Secretary,
with office at Secretariat,
Panaji, Goa.

2. Goa Public Service Commission,
through its Chairman, with
Office at behind EDC House,
Dada Vaidya Raod, Panaji, Goa.

3. Prakash Korgaonkar,
Verla, Kanka, Bardez, Goa. Respondents.

Mr. Sudesh M.S. Usgaonkar, Advocate for the
Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. P.A.
Kamat, Addl. Govt. Advocate for respondent No.1.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D.
Naik, Advocate for respondent No.2.

Mr. M.S. Sonak, with Mr. D. Pangam, Advocate for
respondent No.3.

CORAM: F.I. REBELLO &
P.V. HARDAS, JJ.

DATE: JUNE 17, 2003.

ORAL JUDGMENT: (Per REBELLO, J).

The petitioner was one of the applicants for
the post of Veterinary Officer, pursuant to an
advertisement dated 8th August, 1996 along with

respondent No.3 herein and others. Respondent No.3 was selected to the post. The order of appointment was issued on 11th June, 1997. Respondent No.3 continues in services. The grievance of the petitioner by this petition is that respondent No.3 was not duly qualified in terms of the Recruitment Rules framed by respondent No.1 under Article 309 of the Constitution of India. It is contended that the essential qualifications for the appointment to the post of Veterinary Officer were, recognised veterinary qualification included in the First or Second Schedule to the Indian Veterinary Council Act, 1984 (Central Act 52 of 1984) and registered with the State Veterinary Council.

It is pointed out that though respondent No.3 had the first qualification, yet on the date when the advertisement had appeared and on the last date for receipt of applications, respondent No.3 was not registered with the State Veterinary Council. It is pointed out that those essential qualifications could not have been relaxed. It is further pointed out that the purpose of being registered with the State Veterinary Council is that the candidate is eligible to practice. Respondent No.3, therefore, could not have practised on the last date for applications. Therefore, considering that till the last date for receipt of applications, the respondent No.3 did not

have qualifications, his application ought to have been rejected and the mere fact that subsequently, on 24/9/1996, the petitioner was registered but before the interview on 30.9.1996, would be of no consequence. The advertisement, it is contended, did not point out that the qualifications could be relaxed and/or application of a candidate could be considered if by the time of the oral interview he was qualified. In these circumstances, it is contended that the appointment of respondent No.3 ought to be struck down. It is secondly contended that the advertisement was only for four posts. Once 4 candidates were appointed, the list exhausts itself. The petitioner was not amongst the four candidates who were selected by the selection committee, namely the Goa Public Service Commission and that being the case, the appointment of respondent No.3 is arbitrary, illegal and consequently, is liable to be quashed and set aside. Reliance is placed on various Judgments, which would be adverted to in the course of the Judgment.

2. On the other hand, on behalf of the respondents, it is contended that in so far as qualifications are concerned, the Goa Public Service Commission considering that respondent No.3, at the time of the advertisement had qualifications, has considered him. It is pursuant to the recommendations

of the Goa Public Service Commission, respondent No.1 issued the letter of appointment. In these circumstances, it cannot be said that on the facts of the present case that respondent No.3 was not duly qualified as he had no requisite qualifications. Respondent No.3, it is pointed out, had applied for being registered with the State Veterinary Council by his application dated 24.10.1994. The College from which respondent No.3 passed out, was recognized by the Veterinary Council in April, 1996 and its name was included amongst the recognized Colleges. This recognition was for the period 1990 to 2000. Respondent No.3 passed out from the institution in the year 1994. Therefore, there was a recognition for the qualifications of the petitioner even before the advertisement. The concerned body itself issued the necessary certificate of registration to respondent No.3 on 24.9.1996. Considering these facts, it is pointed out that, this Court should not at least on the facts of the case exercise its extra-ordinary jurisdiction and interfere with the appointment.

Coming to the second contention of the list being exhausted, it is pointed out that in the advertisement itself it was set out that there were four clear vacancies and three further vacancies were likely to arise. The petitioner along with the

respondent No.3 and other candidates appeared for the interview. There was no challenge by the petitioner or any other person that the posts which were to be also filed in could not have been filed. In these circumstances, it is pointed out that once the petitioner himself having applied pursuant to the advertisement which clearly showed four clear vacancies and three vacancies which were likely to arise, it is not open to the petitioner to now contend before this Court that only four vacancies had to be filled in and not seven. At any rate, it is pointed out that the petitioner himself has been appointed on 19.3.2002 and even if the appointment of respondent No.3 is set aside, the petitioner cannot be considered for appointment from the back date. For all the aforesaid reasons, it is submitted that this Court should not interfere with the appointment of respondent No.3.

3. We have heard the learned Counsel for the parties. The facts, relevant, have already been narrated above. The short issue which will have to be decided is, whether the appointment of respondent No.3 has to be set aside on the ground that on the last date of submitting the applications in response to the advertisement, respondent No.3 had not been issued the certificate by the Veterinary Council that he was registered with them. Rules have been framed under

Article 309 of the Constitution of India. It is now settled proposition of law that Rules have to be followed. Only gaps in the Rules can be filled up by administrative instructions and which are not inconsistent or contrary to the rules. It is further settled law that essential qualifications cannot be by-passed. The only issue is whether, as pointed out earlier, respondent No.3 can be said to be excluded from the interview process on account of the fact that the statutory body which was to register him, chose to register him only on 24.9.96 though his application was pending from 25.10.94. On behalf of the petitioner, learned Counsel relied on the Judgment in the case of **Charles K. Skaria and ors. v. Dr. C. Mathew and ors.**, AIR 1980 SC 1230 to point out that mere hardships, by itself is not sufficient and what has to be considered is the right of respondent No.3. On the other hand, on behalf of respondent No.1 State it was pointed out, placing reliance on the Judgment of **Uma Shankar Sharma v. Union of India**, (1980) 3 SCCs. 202 that the Courts should not view the conditions of eligibility too technically. In that case, the candidate was required to be a sportsman, who had represented his university in an Inter-University Tournament conducted by the Inter-University Sports Board. Though the petitioner had been selected by the University, the petitioner therein had not actually

participated in the tournament for reasons beyond his control. In these circumstances the Court held that, that would not be fatal. In the instant case, respondent No.3 had requisite qualifications as included in the Schedule to the Indian Veterinary Council Act, 1984. The respondent No.3 had also applied for registration with the State Veterinary Council, which he had done by his application dated 25.10.1994. It is true that as on 25.10.1994, the College from which respondent No.3 has passed out was not recognized. However, it came to be recognized in April, 1996 and the recognition was for the period 1990-2000. Therefore, as of the date of the advertisement, the petitioner was duly qualified, having qualifications from a recognized College, which was recognized by the Indian Veterinary Council Act, 1984. Respondent No.3's application was pending as on the date when the College was recognized. A failure to perform a managerial function or the statutory duty cast on the body which grants recognition to a candidate by itself cannot be said to be fatal if, at least, on the date of the advertisement the application of the respondent No.3 was pending with such a body and the candidate was otherwise eligible. The respondent No.3's application was pending when he submitted his application and even before the interview was conducted on 30.9.1996, the formal order had been issued.

Therefore, it cannot be said in this case that respondent No.3 did not have the essential qualifications in the manner stated. Position perhaps may have been different, if the application of respondent No.3 had been rejected. Considering the above, it would be difficult to hold, on the facts and circumstances of the case that respondent No.3 did not possess the essential qualifications. In our opinion, the first contention raised on behalf of the petitioner has, therefore, to be rejected.

4. Coming to the second contention, a perusal of the advertisement itself would show the number of vacancies. Relevant part of the advertisement reads as under :

"4 posts (3 more vacancies are likely to arise shortly)."

In other words, it was not only four posts, but three more vacancies which were likely to arise shortly. It is true that normally the vacancies other than the notified posts cannot be filled in by direct recruitment, unless they are notified, as otherwise the rights of the eligible candidates who may become eligible in the meantime, would be deprived. In the instant case, however, the records show that there were three expected vacancies. Those three vacancies, two of them were reserved for Schedule Caste and one was

reserved for Schedule Tribe candidates. A meeting of the committee constituted to consider the proposal for dereservation of vacancies by respondent No.1 was held on 30.9.1996. On that day, item No.XI were vacancies in Animal Husbandry and Veterinary Services. The decision was taken to dereserve the said vacancies. In other words, these vacancies became available to be filled from amongst general candidates. Therefore, on the date of the advertisement those vacancies were available, but reserved. They were dereserved on 30.1.96. In the meantime, the vacancies had lapsed. Steps were thereafter taken for revival of the said posts, which was subsequently done by order of the State Government on 6.12.1996. The State Government itself on 22.7.1996 had sent a requisition to the Secretary, Animal Husbandry intimating this position that in addition to 4 vacancies, three more posts of Veterinary Officers would be available against reserved quota. It is, therefore, clear that in so far as second contention is concerned, the posts, in fact, were available, being reserved posts which were dereserved. The posts were revived by letter dated 6.12.1996. In these circumstances, it cannot be said that respondent No.1 had acted arbitrary in advertising the said posts. At any rate, the petitioner himself cannot complain, he having applied not only for the four posts, but also for further three posts.

In so far as the Judgment of the Apex Court in **State of Bihar and another v. Madan Mohan Singh and ors**, AIR 1994 S.C. 765 is concerned, that was on the proposition that once candidates from the Select List had been appointed from the notified vacancies, the Select List gets exhausted. That list, thereafter, cannot be followed for filling up other vacancies which were not notified. In the instant case, the vacancies were notified and posts were available, but at the relevant time as reserved posts. It is no doubt true that the Judgment of the Full Bench of this Court in **Dr. Rakesh Ravi v. The Dean, Goa Medical College and ors.**, 1998(1) GLT 270 was brought to our attention. It is not necessary to go into that Judgment as that Judgment was based on the Rules which were in the nature of administrative instructions. In the instant case, Rules have been framed under Article 309 of the Constitution of India.

5. For the aforesaid reasons, we find no merit in this petition. Rule discharged. There shall be no order as to costs.

F.I. REBELLO, J.

P.V. HARDAS, J.

ssm.